UNITED
NATIONS

AT

Administrative Tribunal

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1 August 1997

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 839

Case No. 919: NOYEN

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Mayer Gabay; Mr. Julio Barboza;

Whereas, on 6 May 1996, Gerardus A. Noyen, a former staff member of the United Nations, filed an application requesting the Tribunal to:

"1. Decide that since the Appellant had been employed by the United Nations for twenty-one (21) years on a full time basis and was already fifty-eight (58) years old he had a reasonable expectancy of continued employment within the United Nations Organization, at least until the age of sixty (60).

2. Decide that the separation of the Appellant was immoral and inhumane, and at variance with standard labour relations practice in the developed world.

3. Decide that the Respondent made no effort to identify alternative employment for the Appellant within the United Nations Organization.

...

6. Decide that the Appellant be exempted from Staff Rule Annex III, Termination indemnity, paragraph (d), which states: 'No indemnity will be made to a staff member who is retired under the Regulations of the United Nations Joint Staff Pension Fund.'

7. Order the Respondent to pay the Appellant's salary and New York post adjustment for the period of 1 April 1994 - 3 September 1995."

Whereas the Respondent filed his answer on 5 July 1996;

Whereas the Applicant filed written observations on 3 September 1996;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Organization on 1 July 1973, as a Special Technical Advisor in drilling technology in the Department of Economic and Social Affairs, now part of the Department for Development Support and Management Services (DDSMS), on a two year intermediate-term appointment, under the 200 Series of the Staff Rules, at the L-4, step VI level. His appointment was subsequently extended 14 times, until 31 March 1994, when he was separated from the Organization. At the time of his separation from service, the Applicant held an appointment at the L-6, step VII level.

In a memorandum dated 14 June 1989, the Under-Secretary-General (USG), Department of Technical Cooperation for Development, announced his approval of guidelines submitted by a department-wide panel on the Administration of Headquarters Project Personnel (the Guidelines) for the improvement and streamlining of the procedures for recruitment, appointment, extensions, reclassification and terms of reference of project personnel.

With respect to extension of appointments and retirement, the Guidelines stated, inter alia, that the extension of appointments was subject to the availability of funds and a continuing need for the area of expertise at issue. In addition, the Guidelines stipulated that all project personnel appointments carried no legal expectancy of renewal or conversion to any other type of appointment. Nevertheless, "every effort" would be made to "give

three months' notice of non-renewal" to the holders of project personnel appointments."

In a memorandum dated 22 September 1993 to the USG, Department of Administration and Management (DAM), the USG/DDSMS advised that he "intend[ed] to extend all DDSMS Series 200 staff for six months subject to programme requirements with effect from 1 January 1994." By memorandum dated 13 October 1993, the USG/DAM, replied that "it [was] prudent at [that] point in time to extend the appointments of the [200 Series technical staff] for three months through 31 March 1994" in order "not to prolong the implementation of the Secretary-General's decision to distribute some of the resources to the Regional Commissions."

In a memorandum dated 30 November 1993, from the USG/DDSMS to the Director of Personnel, Office of Human Resources Management, regarding the age limit for 200 Series personnel, the USG advised that the practice of the Department before 1991 had been that "project personnel could be appointed and ... retained in service up to the age of 70." He stated that, in October 1991, the Department had adopted the Guidelines "to ensure a fair, equitable and transparent system for the formulation of recommendations related to the appointment, extension and reclassification of 200 Series staff administered at Headquarters", which guidelines were not intended to modify the basic conditions of service of 200 Series staff under the Staff Regulations and Rules and in their letters of appointment.

On 9 February 1994, the USG/DDSMS wrote to the USG/DAM, informing the latter of the developments relating to the 200 Series staff, including the three month extension of appointments of interregional and technical advisors assigned to DDSMS Headquarters. The USG/DDSMS added that the General Assembly, by approving the 1994-1995 proposed programme budget, had confirmed the decentralization of some 200 posts to the regional commissions. As the majority of those posts were encumbered, the USG/DDSMS urged the

Administration to establish appropriate machinery for the redeployment of the posts together with their incumbents.

On 28 December 1993, the USG/DDSMS informed the Applicant that his appointment had been extended until 31 March 1994. The letter further stated that "[t]he Department [was] ... experiencing serious financial constraints and programmatic uncertainties" and, therefore, the USG "[was] unable at [that] time to provide [the Applicant] with any assurances that the necessary resources and programmatic needs [would] be there to justify the extension of [his] appointment in [the] Department any further beyond its currently scheduled expiry date."

On 21 February 1994, the Applicant requested an administrative review of this decision. On 18 March 1994, the Applicant requested a suspension of action on the decision not to extend his contract beyond 31 March 1994. On 31 March 1994, the Joint Appeals Board (JAB) adopted its report on the Applicant's request and recommended to reject it. The JAB adopted its report on the merits on 14 March 1996. Its considerations, conclusions and recommendation read, in part, as follows:

> "Considerations
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> ...
>
> 20. The Panel first considered whether the Appellant had a legal expectancy of the renewal of his contract. The Panel noted that the Appellant was recruited under the 200 Series of the Staff Rules which applied to all project personnel appointed by the Secretary-General for service with technical assistance projects on a temporary appointment. As a rule, fixed-term appointments do not carry an expectancy of renewal, as expressly provided in staff rule 204.3(d) which stipulates that 'a temporary appointment does not carry any expectancy of renewal', as well as in the Appellant's letter of appointment that was signed by him. Nevertheless, the United Nations Administrative Tribunal has established that

this principle would not prevail if, by the conduct of the Administration, the Appellant was given a reasonable expectancy of continued employment (Judgements Nos. 285, Perucho; 298, Delano de Stuven and 319, Jekhine). Thus, the Panel had to examine whether certain circumstances of the Appellant's intermediate-term appointment and service created a legal expectancy of continued employment.

21. The Panel considered the main arguments the Appellant had raised to support his claim that he was led to believe that his contract would be renewed, ...

22. The Panel did not accept the premise that since DDSMS has active drilling projects worth several millions of dollars, the Appellant had [a] legitimate expectancy of the continuation of his [employment] with the Organization's funds. The Panel did not find any correlation between the on-going active drilling projects and the question of whether or not the Appellant himself would be given a new contract. The Appellant himself did not submit to the JAB sufficient evidence indicating that based on the availability of funds for on-going projects, he was offered a new contract.

23. The Panel examined the Appellant's contention that the decision not to renew his contract was prejudicial and was a direct result of the expression of his concern about the behaviour of DDSMS. After carefully examining the records before it, the Panel did not find any wrong-doing by the Administration nor any basis for finding that the decision not to extend the Appellant's contract had been improperly taken. The Panel felt that the decision not to renew the Appellant's contract was dictated by the financial and programmatic circumstances facing at the time the Appellant's Department, and was not based on his personal or professional merit.

...

25. The Panel was of the opinion that the Appellant's type of appointment, namely an appointment under the 200 Series, was contingent on the availability of projects and their funding. For that reason it is stipulated in staff rule 204.3 that 'Project personnel shall be granted temporary appointments'.

...

27. The Panel also considered the Appellant's contention that he had been given repeated assurances both by the Administration and by his own Department that, no matter what the scope of the financial difficulties faced by the Organization, a solution would be found to ensure his continued employment. The Panel noted that the Administration tried to find ways in helping the Appellant to continue his service with the Organization. The Panel, however, did not find any evidence that the Appellant had been actually offered an extension of his contract or that he had been given any binding commitment. The Panel felt, however, that the assurances given by the Department allowed room for ambiguous interpretation, which apparently misled the Appellant.

Conclusions and recommendation

28. The Panel concluded that the decision not to renew the Appellant's contract did not violate his rights, including his right to due process.

29. The Panel also concluded that under the terms and conditions of the Appellant's employment, he had no right to the renewal of his appointment nor had the Organization led him to have a reasonable expectancy of continued employment.

30. Accordingly, the Panel recommends that the appeal be rejected."

On 15 March 1996, the USG/DAM transmitted to the Applicant a copy of the JAB report and informed him as follows:

"The Secretary-General has re-examined your case in the light of the Board's report. He has noted the Panel's conclusions that the decision not to renew your contract did not violate your rights, including your right to due process; and, that under the terms and conditions of your employment, you had no right to the renewal of your appointment nor had the Organization led you to have a reasonable expectancy of continued employment. The Secretary-General is in agreement with the Panel and has decided, accordingly, to maintain the contested decision and to take no further action on your case."

On 6 May 1996, the Applicant filed with the Tribunal the application referred to above.

Whereas the Applicant's principal contentions are:

1. Given his employment history with the Organization, the Applicant had a reasonable expectation of continued employment until he reached 60. The decision to separate him violates accepted moral and labour standards worldwide, and was arbitrary and discriminatory.

2. The Applicant should be given a termination indemnity because he was involuntarily separated from the Organization. He also is entitled to the payment of his salary from the date of his separation until his 60th birthday.

Whereas the Respondent's principal contentions are:

1. The Applicant had neither any right to, nor the legal expectancy of, continued employment with the Organization.

2. Pursuant to Annex III to the Staff Regulations and to the Applicant's Letter of Appointment, the Applicant is not entitled to any termination indemnity.

The Tribunal, having deliberated from 8 July to 1 August 1997, now pronounces the following judgement:

I. The Applicant was recruited in 1973, under the 200 Series of the Staff Rules and served on a series of extensions of his appointment until 31 March 1994. The Applicant's claim results from the non-extension of his appointment after that date, due to a reorganization of resources and the assignment of more development projects to UNDP/OPS at the expense of the United Nations Department

for Development Support and Management Services (DDSMS). According to the Applicant, in view of his long and uninterrupted service, he had an expectancy of continued employment.

II. The Tribunal examined whether, given the circumstances of the case, the Applicant was justified in his expectancy of continued employment with the Organization until the age of 60.

III. The Applicant bases his expectation on what he sees as the Organization's "moral obligation" to maintain him in service. He refers, in this context, to the expressed position of the Administration, that the United Nations, as a good employer, has a moral commitment towards all its staff, taking into account their length of service and other human considerations. The Applicant argues that he had, in fact, become a permanent staff member. This, he asserts, was evidenced by the fact that when the letters of appointment renewing his contract were delayed, he continued to be paid his salary during these gaps, despite the absence of a contract.

IV. While the Tribunal sympathizes with the Applicant's argument that there was a moral obligation on the Organization to maintain him in its employment and, indeed, in purely human terms, that he had an expectation of continued employment until age 60, it finds that this expectation did not impose a legal obligation on the Organization.

V. Staff rule 204.3(a) provides that "temporary appointments shall be for a fixed-term and shall expire without notice on the date specified in the respective letters of appointment." Staff rule 204.3(d) provides that "a temporary appointment does not carry

any expectancy of renewal." These rules govern the Applicant's employment with the Organization, and are clearly incompatible with the Applicant's claim. To overcome these provisions, the Applicant would have to demonstrate either arbitrariness or discrimination on the part of the Administration.

VI. The Tribunal notes that the Respondent was negligent in the past, in failing to present the Applicant with timely renewals of his employment contracts. The contracts were then renewed retroactively. There was no interruption in payment. This conduct may have given the Applicant the mistaken impression that the absence of a contract during the intervening period did not affect his status, which he believed to be equivalent to that of a permanent staff member.

However, on this occasion, the Under-Secretary-General, DDSMS, informed the Applicant by letter of 28 December 1993, that his appointment had been extended until March 31, 1994. The letter further stated that "[t]he Department [was] ... experiencing serious financial constraints and programmatic uncertainties" and, therefore, the Under-Secretary-General "[was] unable at [that] time to provide [the Applicant] with any assurances that the necessary resources and programmatic needs [would] be there to justify the extension of [his] appointment in [the] Department any further beyond its currently scheduled expiry date."

Effective 1 January 1994, the Applicant's appointment was extended for three months. On 31 March 1994, his appointment expired and he was separated from service.

VII. The Tribunal has also considered the treatment of staff members engaged under different series of the Staff Rules. The Applicant, in accepting appointment under a specific series, was

aware of the conditions of his appointment. He cannot, therefore, argue that it was only after his appointment had commenced that his position became disadvantageous vis-a-vis that of a staff member appointed under a different series. Accordingly, an argument based on discrimination must fail. The Respondent, in dealing with the Applicant as he did, was doing no more than applying the relevant rules.

VIII. The Tribunal finds that the position is the same in relation to the Applicant's claim that, because his separation was involuntary, he was entitled to a termination indemnity. The provisions of Annex III of the Staff Regulations are clear, i.e., "(d) No indemnity payments shall be made to ... A staff member who has a temporary appointment for a fixed term that is completed on the expiration date specified in the letter of appointment." Hence, the Applicant is not entitled to a termination indemnity.

IX. However, the Tribunal notes that the Joint Appeals Board, in its report, stated that "the assurances given by the Department [with regard to the Applicant's further employment] allowed room for ambiguous interpretation which apparently misled the [Applicant]." This confusion, coupled with the Applicant's erroneous assumptions concerning his status, must be considered as having adversely affected his alternate plans for employment resulting in possible loss. For this, he is entitled to compensation, which the Tribunal assesses at six months of his net base salary on the date of his separation from service.

X. For the foregoing reasons, the Tribunal orders the Respondent to pay to the Applicant six months of the Applicant's net base salary at the rate in effect on the date of his separation from service.

All other pleas are rejected.

(Signatures)

Hubert THIERRY
President

Mayer GABAY
Member

Julio BARBOZA
Member

Geneva, 1 August 1997

R. María VICIEN-MILBURN
Executive Secretary

UNITED NATIONS

AT

Administrative Tribunal

Distr.
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1 August 1997

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 840

Case No. 920: MUCINO

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Samar Sen, First Vice-President; Mr. Mikuin Leliel Balanda, Second Vice-President;

Whereas at the request of José Luis Muciño, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended the time-limit for the filing of an application with the Tribunal until 31 December 1995 and 31 March 1996;

Whereas, on 28 March 1996, the Applicant filed an application requesting the Tribunal, inter alia, to find:

"...

(a) That the Administration's course of action of arbitrarily transferring the Applicant to another post which was subsequently abolished and which resulted in the termination of his permanent contract was in bad faith and in violation of United Nations Staff Rules and Regulations;

(b) That the Administration failed to consider [the] staff member for another suitable post as required under staff rule 109.1(c) ...

9. ... to order:

(a) That the unanimous recommendation of the Joint Appeals Board be implemented by the Secretary-General which calls for reinstatement of the Applicant retroactive to 1 April 1994, with full salary and benefits and, to compensate him for the painful mental ordeal caused by the Administration's arbitrary decision which terminated his contract, the Organization should pay the Applicant an additional sum of two months' net salary.

In the alternative:

(b) That if reinstatement is denied, that the Secretary-General compensate the Applicant for the injuries sustained as a result of the Administration's arbitrary decision to terminate his contract and its failure to act in accordance with United Nations Staff Rules and Regulations, by paying the Applicant the equivalent of five-years' pensionable remuneration, in addition to the termination indemnity of 21 months plus accumulated leave."

Whereas the Respondent filed his answer on 16 January 1997;

Whereas the Applicant filed written observations on 30 May 1997;

Whereas, on 14 July 1997, the Tribunal put questions to the Respondent, to which he provided answers on 16 July 1997;

Whereas the Applicant submitted additional comments on 17 July 1997;

Whereas, on 24 July 1997, the Tribunal requested the Respondent to provide it with further information, which the Respondent did, on 30 July 1997;

Whereas, on 30 July 1997, the Applicant submitted additional comments;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations Development Programme (UNDP) in Mexico City, Mexico, on 17 July 1972, on a three month fixed-term appointment, as a Chauffeur, at the G-2, step I level. His appointment was subsequently renewed for

successive fixed-term periods. With effect from 1 January 1997, he was promoted to the G-3 level and, on 17 July 1978, was granted a permanent appointment. That year, he assumed new duties and his functional title was changed to Administrative Clerk. In 1981, he was promoted to the G-4 level. He remained in the Administrative Clerk post, or in similar positions, until 1988, when he became Finance Clerk.

On 1 November 1988, the Applicant was assigned to the G-5 post of Finance Clerk (Cashier) (Post No. MEX-025-DA-G-E), a position which he held until mid-1993, when his post was abolished. The Applicant subsequently served as a Secretary (Post No. MEX-040-DE-G-E) and was paid from extra-budgetary funds until 31 March 1994, when his permanent appointment was terminated and he was separated from the Organization.

From July 1973 through June 1978, while serving as a Chauffeur, the Applicant consistently received "very good" overall ratings. In his service as an Administrative Clerk or in similar posts, he consistently received overall ratings of "a competent and well-qualified staff member whose performance meets expected standards." In April 1985, the UNDP-Mexico Resident Representative (the UNDP Resident Representative), recommended the upgrading of the Applicant's post and his promotion to the G-5 level based on his "outstanding performance". In 1990, the Applicant received all "very good" individual ratings, as a Finance Clerk. No overall rating was given. During 1991, the Applicant was rated as "meet[ing] the expectation of the performance plan (3)". In 1992, the Applicant was rated as "meet[ing] some of the expectations of the performance plan but ... need[ed] improvement (4)", a rating which was accepted by the Comité de Gestión. The Applicant's performance from February 1993 to January 1994 was rated as having "[f]ully met the expectations of the Job Description and the Individual Performance Plan".

The January 1993 UNDP-Mexico Staffing Table for Locally Recruited Staff lists the Applicant as encumbering the post of Finance Clerk (Post No. MEX-025-DA-G-E). Another staff member is listed as occupying the post of Registry Clerk (Post No. MEX-023-DA-G-E).

On 26 March 1993, the UNDP Resident Representative wrote to the Regional Director, Regional Bureau for Latin America and the Caribbean (RBLAC), UNDP, attaching a list of the "extra-budgetary posts, including post number and functional title, before and after budget strategy exercise." Included among the seven "Non-Core" posts listed under the portion entitled "After Budget Strategy" was Post No. MEX-023-DA-G-E, Registry Clerk.

On 31 March 1993, the UNDP Resident Representative wrote to the Applicant, advising him that his periodic salary increment from the G-4, step 10 level to the G-4, step 11 level, effective 1 April 1993, would not be paid, due to his 1992 performance appraisal review (PAR) rating of "4".

On 12 April 1993, the UNDP Resident Representative advised the Applicant that, based on the results of his 1992 PAR, the Comité de Gestión had recommended that consideration be given to assigning him to another section in order to help him improve his work. The UNDP Resident Representative informed the Applicant that his assignment to the post of Administrative Clerk/Registry would occur in June 1993, with a trial period to commence on 15 April 1993.

On 19 April 1993, the Applicant wrote to the Director, Division of Personnel, UNDP, stating that he had received a copy of his 1992 PAR on 31 March 1993, and expressing his comments on and objections to various statements contained therein.

On 31 May 1993, the Representatives of the Executive Committee of the Staff Association of UNDP wrote to the Comité de Gestión, contesting the "4" rating given in the Applicant's 1992 PAR and requesting reconsideration of the decision not to grant the Applicant his periodic salary increment.

According to the UNDP-Mexico Staffing Table and the Audit Report printout dated 1 October 1993, covering the July-September 1993 quarter for Locally Recruited Staff, the Applicant held the post of Finance Clerk, Post No. MEX-025-DA-G-E and another staff member held the post of Registry Clerk, Post No. MEX-023-DA-G-E. A UNDP Personnel Action Form signed by the UNDP Resident Representative on 12 October 1993 showed the Applicant's functional title as Finance Clerk, Post No. MEX-025-DA-G-E.

On 18 November 1993, the UNDP Resident Representative wrote to the Applicant, referring to their 28 September 1993 meeting when he had advised the Applicant that, "for budgetary reasons", his contract would be terminated as a result of a request from UNDP Headquarters involving the abolition of several posts. The UNDP Resident Representative offered the Applicant two proposals for an agreed termination: (1) special leave with full pay and (2) a lump sum payment. The UNDP Resident Representative and UNDP Headquarters recommended the lump sum payment, which would result in termination indemnities equivalent to 22.5 months, plus 60 days of accumulated leave.

On 20 December 1993, the Chief, Staffing Section, Division of Personnel, UNDP, wrote to the UNDP Resident Representative, advising him that the Applicant's request for 27 months of separation indemnity could not be granted "since the Organization [could] only offer indemnities in conformity with the Staff Rules [and] Regulations".

On 23 December 1993, the UNDP Resident Representative wrote to the Applicant, outlining the Administration's offer for an "agreed separation", (i.e., 12 months' salary as a termination indemnity under staff regulation 9.1(a), an additional six months' salary of exceptional indemnification under staff regulation 9.3(b), three months' salary in lieu of notice under staff rule 109.3(c), and paid accumulated annual leave up to a maximum of 60 days). He further advised the Applicant that, in the absence of an agreed

separation, the post held by the Applicant (Administrative Clerk/Registry) would still be abolished as of 1 January 1994.

According to a Personnel Action Form dated 11 January 1994, the Applicant was placed against the extra-budgetary post of Secretary (Post No. MEX-040-DE-G-E) as of 1 January 1994, pending confirmation of the agreed termination.

According to the UNDP-Mexico Staffing Table and the Audit Report dated 19 January 1994, covering the October-December 1993 quarter for Locally Recruited Staff, the Applicant held the post of Secretary, Post No. MEX-040-DE-G-E and another staff member held the post of Finance Clerk, Post No. MEX-025-DA-G-E. Post No. MEX-023-DA-G-E does not appear in the Staffing Table.

On 7 March 1994, the Regional Director, RBLAC, UNDP, wrote to the UNDP Resident Representative to discuss the need, for budgetary reasons, to eliminate two core posts in the UNDP Mexico office, with effect from 31 December 1993. He stated that the Registry post occupied by the Applicant was to have been cancelled with effect from 31 December 1993. The Regional Director sought confirmation that the post had been abolished and that the occupant of the post, i.e., the Applicant, had ceased to perform the functions of the office and had been separated from service.

On 16 March 1994, the Applicant wrote to the Administrator, UNDP, requesting an administrative review of the decision to separate him from the Organization. In the event he were to be terminated, he asked for a termination indemnity of "27 months of salary plus vacations", rather than 21 months plus vacations.

On 25 March 1994, the Chief, Staffing Section, Division of Personnel, UNDP, informed the Officer-in-Charge, UNDP-Mexico, that a decision had been made to terminate the Applicant's permanent appointment under staff regulation 9.1(a) for abolition of his post, with effect from 31 March 1994. The Chief reiterated that the Applicant would be entitled to payment of three months' net base

salary in lieu of notice, termination indemnities equivalent to 18 months' net base salary, and payment in cash for up to 60 days' accumulated annual leave.

On 28 March 1994, the UNDP Resident Representative wrote to the Applicant confirming that the post of Administrative Clerk/Registry had been abolished with effect from 31 December 1993. He further confirmed that the Applicant would cease to carry out his functions on 31 March 1994. The UNDP Resident Representative repeated the Administration's earlier offer of a termination indemnity consisting of 18 months' salary, three months' salary in lieu of notice, and a maximum of 60 days of accumulated annual leave.

On 19 April 1994, the Chief, Legal Section, Division of Personnel, UNDP, informed the Applicant that the Administration had decided, after an administrative review, to maintain its decision regarding the amount of the lump sum separation indemnity and to confirm the decision not to grant him a salary increment in 1993.

The August 1994 UNDP-Mexico Staff Table for Locally Recruited Staff listed another staff member as holding the post of Finance Clerk, Post No. MEX-025-DA-G-E.

On 5 July 1994, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 15 March 1995. Its considerations and recommendations read, in part, as follows:

> "...
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> 29. ..., the Panel found that the Appellant never encumbered the Registry Clerk post, Post No. MEX-023-DA-G-E. The official documents showed the Appellant as encumbering other posts; no official document demonstrated that the Appellant ever encumbered the Registry Clerk post. When weighed against this official documentation, the Panel found the informal note to the file, which stated only that a PAF needed to be done and did not appear to inform the Appellant or anyone else of such reassignment, and the 12 April 1993 letter to the Appellant, which did not refer to a post number, to be insufficient to support the Respondent's

position that the Appellant had encumbered the Registry Clerk post (Post No. MEX-023-DA-G-E). The Respondent asserted that 'the administrative delay in updating the official record of the office is not a material omission'. The Panel disagreed. The Panel found reassignments of other staff members reflected in the FOST [Field Office Staffing Table] reports and only the Appellant's alleged assignment to the Registry Clerk post appeared to have been omitted. The Panel found this omission to be highly significant because it was as a result of this alleged assignment that the Appellant's permanent contract was terminated.

30. Having found that the Appellant had never encumbered the Registry Clerk post, Post No. MEX-023-DA-G-E, the Panel concluded that there was no basis to terminate his permanent appointment for abolition of post under staff regulation 9.1 and staff rule 109.1. The Panel thus found that the decision to terminate his contract was arbitrary and the termination was invalid.

31. The Panel next addressed the Appellant's claim that the Administration knew in March 1993, prior to the UNDP Mexico Resident Representative's 12 April 1993 letter advising him that he would be assigned to the Registry Clerk post, that such post would be abolished.

...

33. ... certain core posts, including the Registry Clerk post, became 'non-core' posts after the March 1993 budget strategy and thus had to be financed by extra-budgetary funds. The Panel thus found that, when the Administration notified the Appellant of his proposed assignment to the Registry Clerk post, the Administration was aware that such post was no longer a core post, was dependent on extra-budgetary sources, and therefore, was in jeopardy. The Panel did not find, however, that at that time the Administration had already decided that the Registry Clerk post would be abolished. The Panel further determined that, even though the Administration did not officially transfer the Appellant to the Registry Clerk post, the Administration should not transfer a permanent staff member from a core post to a 'non-core' post dependent on extra-budgetary sources.

34. Lastly, the Panel addressed the Administration's compliance with staff rule 109.1(c), which, in connection with the abolition of posts and reduction of staff, states that, '... subject to the availability of suitable posts in which their services can be effectively utilized, staff

members with permanent appointments shall be retained in preference to those on all other types of appointments' with due regard being given to 'relative competence, to integrity and to length of service'. In its 13 February 1995 memorandum, the Panel requested the Administration to provide evidence of its efforts to place the Appellant against suitable core posts prior to his termination. The Representative of the Secretary-General advised:

> '... Appellant was considered for all suitable core posts ... consistent with staff rule 109.1(c). This Rule refers to "relative competence" and "integrity" as well as "length of service". Appellant was found not to have the competence or skills for each of a number of posts because of his lack of a working knowledge of English. Thus, he could not have been placed against the posts of Secretary, Administrative Clerk or Programme Assistant. Nor could he have been placed against his former post of Finance Clerk, given the circumstances which led to his transfer from that post in the first place. This involved, among other things, the failure of the Appellant to reconcile an error in the petty cash fund until two months after the fact. ... Other positions which were found not suitable were those below Appellant's grade level.'

35. While taking note of the Respondent's position that the Appellant lacked the English language skills necessary for a number of posts, including the posts of Secretary and Administrative Clerk, the Panel was not provided with evidence to demonstrate that the Administration had made serious efforts to place the Appellant against suitable core posts or had given the Appellant full and fair consideration for such posts. For example, among the 'suitable core posts' for which the Appellant was said to have been considered was an Administrative Clerk post at the G-4 grade. Such post was occupied in January 1994 by a staff member on a fixed-term appointment. The Panel observed that the Appellant had satisfactorily performed in an Administrative Clerk or similar post from 1976 to 1988, and had been promoted from the G-3 to G-4 grade while serving in such posts. Absent evidence to the contrary, therefore, the Panel considered that the Appellant could have performed the functions of such post and, based on staff rule 109.1, should have been retained in preference to the staff member on a fixed-term appointment. Likewise, if the Administration could transfer the Appellant to an extra-budgetary Secretary post (Post No. MEX-040-DE-G-E), it was unclear why the Appellant could not have been appointed to a core Secretary post, one of

which was occupied by a fixed-term staff member who had previously encumbered the abolished Registry Clerk post. Accordingly, the Panel found that the Administration had failed to fulfil its obligations under staff rule 109.1(c).

36. Although the Panel concluded that the Administration had no basis upon which to terminate the Appellant for abolition of post, the Panel noted that the termination indemnity of 21 months of pensionable remuneration offered to the Appellant, plus accumulated annual leave up to a maximum of 60 days, appeared to represent the maximum amount payable to terminated staff members under the Staff Regulations and Rules.

37. With respect to the damages claimed by the Appellant, i.e., 'an amount equivalent to the salary and benefits he would have received had he remained with UNDP until he reached 60 years of age', the Panel recognized that, in a period of down-sizing and 'global budget-cutting', even a permanent staff member cannot be assured of a post until retirement. Taking this into consideration, as well as judgements of the Administrative Tribunal involving the wrongful denial of a career appointment or an invalid termination, in which damages of up to three years' net base salary had been awarded, the Panel determined the amount of two years' pensionable remuneration, in addition to the termination indemnity of 21 months plus accumulated leave, should be paid to compensate the Appellant for the injuries he sustained and will sustain if he is not reinstated.

Recommendations

38. The Panel unanimously recommends that the Secretary-General reinstate the Appellant retroactive to 1 April 1994, with full salary and benefits and, to compensate him for the painful mental ordeal caused by the Administration's arbitrary decision which terminated his contract, recommends that the Organization pay the Appellant an additional sum of two months' net salary.

39. If the Secretary-General decides not to reinstate the Appellant, to compensate him for the injuries sustained as a result of the Administration's arbitrary decision which terminated his contract and its failure to act in accordance with staff regulations and rules, the Panel recommends that the Organization pay the Appellant two years' pensionable remuneration, in addition to the termination indemnity of 21 months plus accumulated leave."

On 27 June 1995, the Under-Secretary-General for Administration and Management transmitted a copy of the JAB report to the Applicant and informed him as follows:

> "The Secretary-General has examined your case in light of the Board's report. While he recognizes that certain minor administrative lapses occurred in your case, they were not so significant as to invalidate, in the context of retrenchment, the efforts made by UNDP to place you against a suitable core post; nor to nullify the fact that you discharged actually the functions of Registry Clerk and received on-the-job training.
>
> For the foregoing reasons, the Secretary-General has decided to reject the Board's recommendations contained in paragraphs 38 and 39 of its report.
>
> Nevertheless, the Secretary-General decided to substantially improve the financial terms of your separation. In this regard, the Secretary-General noted that if UNDP had paid you a separation benefit in a lump sum, you would have been entitled to receive the equivalent of 21 months of salary, plus your accrued 60 days of annual leave, totalling [Mex]N$[Mexican new peso]144,880.12. This lump-sum formula would have ended immediately all your other employment benefits on 31 March 1994. The separation package which the Secretary-General has now decided to pay you (...), will cost UNDP [Mex]N$236,831.92, and will ensure that you will be bridged into early retirement at age 55 in May 1996 with full medical and pension contributions until that date. The Secretary-General considers that this enhanced separation package certainly goes a long way to meeting the amount of separation indemnities which you initially requested and on the basis of which you were prepared to separate from UNDP in Mexico in March 1994."

On 28 March 1996, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Administration's actions of transferring the Applicant to another post, which was then abolished and which

resulted in the termination of his permanent contract, were taken in bad faith and violated the Staff Regulations and Rules.

2. The Administration failed to consider the Applicant for another suitable post, as required by staff rule 109.1(c) in the event of an abolition of post or reduction of staff and involving a staff member with a permanent appointment.

Whereas the Respondent's principal contentions are:

1. The decision to terminate the Applicant's appointment on account of abolition of post was within the authority of the UNDP Administrator and was properly motivated.

2. Although there are no written records of the efforts to find the Applicant another post, the compensation offered by the Respondent adequately compensates the Applicant for that failure or for any unfairness he may have suffered.

3. The Applicant has failed to discharge the burden of proof on a staff member alleging prejudice to establish such prejudice.

The Tribunal, having deliberated from 14 July to 1 August 1997, now pronounces the following judgement:

I. The Applicant had served as a Finance Clerk/Cashier (Post No. MEX-025-DA-G-E) since 1988 and in mid-1993 was purportedly assigned to the post of Administrative Clerk/Registry (Post No. MEX-023-DA-G-E), a post that was abolished with effect from 31 December 1993. The Applicant subsequently encumbered the post of Secretary (Post No. MEX-040-DA-G-E), an extra-budgetary post, until 31 March 1994, when he was separated from service because of the abolition of the post of Administrative Clerk/ Registry. The January 1993 Mexico Staffing Table listed the Applicant as the incumbent of the Finance Clerk/Cashier post;

another staff member was listed as encumbering the post of Administrative Clerk/Registry. The Applicant's transfer to the post of Administrative Clerk/Registry was to occur in June 1993, with a trial period to commence on 15 April 1993, but there is no Personnel Action Form documenting his transfer to, or occupation of, this post. In addition, the Mexico Staffing Table for October 1993 has listings similar to those of January 1993, which appear to be inconsistent with the Applicant's assignment to the post of Administrative Clerk/Registry in June 1993. The Applicant's Personnel Action Form of 12 October 1993, stated that his functional title was "Finance Clerk/Cashier". Although the abolition of the post of Administrative Clerk/Registry did not take effect until 31 December 1993, a memorandum of 26 March 1993 listed extra-budgetary or "non-core" posts before and after the budget strategy exercise. Before the budget exercise, there were two non-core posts, of which one was Post No. MEX-040-DE-G-E, "Secretary"; after the budget exercise, there were seven such posts, including Post No. MEX-023-DE-G-E, listed as "Registry Clerk".

II. From the documents before the Tribunal, it is clear that not only did the Applicant never encumber the post of Administrative Clerk/Registry, but that at the time he was purportedly assigned to it, it was an extra-budgetary or non-core post. In the light of the foregoing, the Tribunal concurs with the JAB that the Applicant's contract was never properly terminated because the Administration attempted to effect his termination by abolishing a post that the Applicant did not encumber and leaving intact the post that he continued to encumber.

III. The Tribunal believes that the Respondent's attempt to assign the Applicant to a post that the Respondent had already decided was "non-core", must also be questioned, particularly as the Applicant, on all the documentary evidence, still encumbered his original post.

It was only in the Mexico Staffing Table of 19 January 1994 (covering the period October-December 1993) that another staff member was listed as encumbering the post of Finance Clerk/Cashier. The Tribunal finds that the foregoing gives rise to a perception that the Applicant was treated unfairly, not merely because there was an effort to assign him to a non-core post, but also because, strangely, the relevant documents were silent as to what was in fact occurring. The situation is exacerbated by the Applicant's final assignment to the post of Secretary, a post paid for from extra-budgetary funds, with all the attendant insecurities that such an arrangement implies.

IV. The Respondent concedes that "certain administrative lapses occurred in [the Applicant's] case." Even if the Tribunal were to accept this description of what occurred, it considers that the career of any staff member is of such significance to that staff member that "lapses" of such importance should not occur. The Respondent's behaviour was such that the Tribunal cannot accept his submission that these "lapses" were not sufficiently significant to taint his decision.

V. Further, the Respondent concedes that there are no written records of his efforts to find the Applicant another post. The Tribunal must repeat that in a matter fundamental to the Applicant, the very least that should be expected was a written record of such endeavours. The history of the steps taken by the Respondent in his efforts to terminate the Applicant's appointment, his failures and so-called "lapses", shows that they were such as to imply arbitrariness and unfairness on the part of the Respondent.

VI. The Tribunal put questions to the Respondent in order to clarify the amount of compensation that the Applicant had actually received, pursuant to the Secretary-General's decision on the

recommendation of the JAB. In reply, the Respondent has asserted that the Applicant has been paid the sum of MexN$236,831.92. The Tribunal is satisfied that, under the circumstances, the amount paid demonstrates a sincere effort by the Respondent to compensate the Applicant for the wrong done to him.

However, in view of the prejudicial nature of the Respondent's conduct towards the Applicant, the Tribunal considers that the Applicant is entitled to further compensation. The Tribunal assesses the amount of this compensation at six months of the Applicant's net base salary at the rate in effect on the date of his separation from service.

VII. For the foregoing reasons, the Tribunal orders the Respondent to pay to the Applicant, in addition to the sum due to the Applicant pursuant to the Secretary-General's decision of 27 June 1995, an amount equal to six months of his net base salary at the rate in effect on the date of his separation from service.

All other pleas are rejected.

(Signatures)

Hubert THIERRY
President

Samar SEN
First Vice-President

Mikuin Leliel BALANDA
Second Vice-President

Geneva, 1 August 1997

R. Maria VICIEN-MILBURN
Executive Secretary

UNITED NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/841
1 August 1997

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 841

Cases No. 925: GUEST
No. 926: SLATFORD

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Mikuin Leliel Balanda, Vice President; Mr. Julio Barboza;

Whereas at the request of Jean Guest and Christine Slatford, former staff members of the United Nations World Food Council (hereinafter referred to as WFC), the President of the Tribunal, with the agreement of the Respondent, extended the time-limit for the filing of applications with the Tribunal until 31 May 1996;

Whereas, on 24 May 1996, the Applicants filed separate applications, each requesting the Tribunal, inter alia:

> "3. To rescind the final decision of the Secretary-General, as notified to the Applicant[s] in a letter from the Under-Secretary-General for Administration and Management dated 8 November 1995, ..., to order the Applicant[s]' reinstatement with all [their] entitlements from the date of the initial termination decision, i.e. 22 December 1993, or alternatively to order the Respondent to pay [each] Applicant a sum equivalent to five years' gross salary, as well as pension rights, for the material injury sustained;
>
> 4. To award the Applicant[s] compensation in an amount to be set by the Tribunal for the moral injury sustained;
>
> 5. To award the Applicant[s] costs, ..., in an amount to be determined at the conclusion of the proceedings."

Whereas the Respondent filed his answer on 20 January 1997 in respect of the Applicant Slatford and on 28 February 1997 in respect of the Applicant Guest;

Whereas the Applicants filed written observations on 24 June 1997;

Whereas the facts in the case are as follows:

The Applicant Slatford entered the service of the World Food Council (WFC) in Rome, Italy, on 29 September 1975, as a locally recruited Shorthand/Typist at the G-3 level. She was granted a permanent appointment effective 1 April 1979, and on 1 October 1979, she was promoted to the G-5 level. On 1 October 1987, she was promoted to the G-6 level. On 1 October 1991, her functional title was changed to Meetings Services Assistant, the position she held until 31 December 1993, when her appointment was terminated due to the abolition of her post.

The Applicant Guest was transferred from the Food and Agriculture Organization to the WFC Secretariat in Rome, on 15 January 1979, as an internationally recruited Stenographer at the G-3, step V level, under a permanent appointment. On 1 April 1984, she was promoted from the G-4 to the G-5 level. Her functional title was changed to Secretary. Effective 1 April 1989, she was promoted to the G-6 level, the position and level she held until 31 December 1993, when her permanent appointment was terminated due to the abolition of her post.

In 1992, the Secretary-General commenced a process of restructuring the Secretariat of the United Nations. In this context, on the occasion of Staff Day, 11 September 1992, the Secretary-General announced that "while there may well be considerable redeployment, staff at other levels [other than top

echelon posts] [were] in no danger of losing their employment with the United Nations as a result of the restructuring exercise".

The General Assembly, having considered the proposals on restructuring made by the Secretary-General in his Report A/C.5/47/88 of 4 March 1993, adopted on 6 May 1993, resolution 47/212(B), which, inter alia, transferred the WFC Secretariat to the Department for Policy Coordination and Sustainable Development (DPCSD) at the United Nations Headquarters in New York.

From April 1993 until the transfer of the WFC Secretariat on 31 December 1993, the Organization made efforts to relocate WFC staff affected by the transfer to DPCSD. As a result of those efforts, of the thirteen WFC General Service staff, two were relocated in Rome, four resigned and seven were separated due to abolition of post. Of those seven, five did not want to be relocated outside Rome and two - the Applicants - declined offers of alternate employment made to them.

On 29 December 1993, the Applicant Slatford was offered a position in DPCSD in New York. On 30 December 1993, she rejected that offer, primarily on the grounds that she had not been given sufficient time to consider it, as she had been asked to provide an answer by 30 December 1993. On 31 December 1993, the Applicant Slatford wrote to the WFC Executive Officer, definitively rejecting the offer on the basis that the conditions accompanying the offer were not satisfactory to her.

On 30 December 1993, the Applicant Guest was offered a position with the United Nations Compensation Commission in Geneva. On 31 December 1993, she rejected that offer, primarily on the grounds that she was not given sufficient time to consider it, as she had been asked to provide an answer by 31 December 1993. In addition, the Applicant Guest stated that the conditions offered were "entirely unacceptable".

Despite the Applicant Slatford's rejection of the offer of employment with DPCSD, on 3 January 1994, the WFC Executive Officer informed the Applicant Slatford that she had been granted a further "two to three" weeks to reconsider DPCSD's offer. She was informed that she would be placed on special leave with full pay during this period, notwithstanding the fact that the WFC Secretariat had already closed. However, on the following day, the WFC Executive Office informed the Director of Personnel, Office of Human Resources Management (OHRM), that the Applicant had definitively declined DPCSD's offer. She stated the reasons for her rejection in a letter dated 10 January 1994. Accordingly, by memorandum, retroactively dated 30 December 1993, the Applicant Slatford was informed that her appointment was terminated with effect from 31 December 1993.

On 4 January 1994, the WFC Executive Officer transmitted the Applicant Guest's letter of 31 December 1993 to the Director of Personnel, OHRM, New York. The WFC Executive Officer informed the Director of Personnel that, on 3 January 1994, the Applicant had been informed that the Organization "might be able to offer [the Applicant] a probationary appointment despite the nature of the funding for the Commission", instead of the originally offered fixed-term appointment. However, the WFC Executive Officer added that the Applicant had indicated that "she would accept nothing less than a permanent appointment at her current grade/step and non-local status". Accordingly, by memorandum, retroactively dated 22 December 1993, the Applicant Guest was informed that her appointment was terminated.

Subsequently, by letters dated 28 February 1994, both Applicants requested the Secretary-General to review the decisions to terminate their appointments, or alternatively, they requested permission to submit an appeal directly to the Tribunal.

On 14 April 1994, the Officer-in-Charge of the Staff Administration and Training Division informed the Applicants that the contested decision was maintained. On 29 April 1994, the Director of Personnel advised the Applicants that the Secretary-General had rejected their requests for direct submission of their appeals to the Tribunal.

On 30 May 1994, the Applicants lodged separate appeals with the Joint Appeals Board (JAB). The JAB adopted its reports on 24 August 1995. In each case, the JAB's considerations and conclusions read, in part, as follows:

> "Considerations
>
> [As per both Applicants' reports:]
>
> 45. ..., the Panel observed that the Secretary-General, on 11 September 1992, on the occasion of United Nations Staff Day, had stated that he could not 'emphasize too strongly that while there may well be considerable redeployment, staff at other levels, [i.e., those not holding top-echelon posts] [were] in no danger of losing their employment with the United Nations as a result of the restructuring exercise'. According to notes dated 22 April 1993, members of the United Nations Staff Union also had been advised by the Controller on 16 March 1993 'that posts [were] being re-distributed rather than suppressed' and that '[t]here [was] no provision for payment of any indemnities for any type of terminations'. The notes state that the Controller 'felt that it would be useful to highlight the fact that the Secretary-General continue[d] to give his assurance that no staff member [would] lose his or her job'. On 17 June 1993, the Secretary-General met with the Staff Committee in Vienna and, according to a newsletter dated 23 June 1993 of the United Nations Staff Union in Vienna, 'repeated a statement made on several previous occasions, namely that no staff member would lose his/her job as a result of the restructuring exercise'.
>
> 46. The Panel considered the impact of the foregoing statements by the Secretary-General on the Organization's obligation to the Appellant[s] in connection with the termination of [their] permanent appointment[s] for abolition of post due to the restructuring exercise. As the Administrative Tribunal has stated, '... the Administration must behave responsibly in its administrative arrangements

and refrain from expressing hopes or intentions it has no expectation of fulfilling ...' Judgements Nos. 462 (Tortel) and 342 (Gomez). 'A staff member is normally entitled to expect the Organization to honour commitments on which the staff member has relied in good faith'. Judgement No. 482 (Tortel). The Panel found, therefore, that the Secretary-General's statements imposed on the Organization an obligation to redeploy staff members affected by the restructuring exercise.

47. The evidence indicates that the Administration recognized the broader obligation arising from the [Staff Rules and the] Secretary-General's statements, i.e., to make every effort to find the Appellant[s] (despite [the Applicant's Slatford's] status as a local recruit) a suitable post in any office within the Organization, irrespective of location. [As per the Applicant Slatford's report] [t]he Panel noted that, during the June-October 1993 period, the Appellant had been interviewed and considered for posts with DPCSD in Geneva but was found not to have the necessary experience for the administrative assistant posts in question. At the end of October 1993, the Appellant was under consideration by DPCSD in New York.[1] A Note on the status of WFC General Service staff members as of 9 December 1993 states that the Appellant had not been accepted by DPCSD and was being reviewed for other posts in New York.

[As per the Applicant Guest's report] [b]ased on the considerable correspondence reflecting the Administration's efforts to redeploy the WFC General Service staff in Rome, and taking into consideration the reduced funding and downsizing occurring in UNIC-Rome and the other UN offices in Rome, the Panel found that the Administration had made every effort to find the Appellant a suitable post in Rome.

...

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[1] In a 29 October 1993 memorandum to the Executive Officer of WFC, [the Applicant Slatford] acknowledged that she had been asked to consider relocating to DPCSD in New York to work with the Task Force preparing for the World Summit on Social Development to be held in 1995. With respect thereto, she stated that she 'would need assurance' on certain matters, including maintenance of her permanent contract after the 1995 Summit and assistance with travel and limited removal costs.

[As per both Applicants' reports:]

48. [However], it was not until the 29 [for the Applicant Slatford] [and] 30 [for the Applicant Guest] December 1993 that the Administration offered the Appellant[s] a post.

...

Recommendations

51. Based on the foregoing considerations and findings, the Panel recommends

(a) that the Organization pay the Appellant[s] the sum of $4,000.00 [each] for the unreasonable and untimely manner in which the 29 December 1993 offer was made;

(b) that the Organization pay the Appellant[s] the sum of $1,000.00 [each] for its failure to properly inform [them] of the developments in connection with the restructuring exercise; and

(c) that the Appellant[s]' other claims be rejected."

By letters dated 8 November 1995, the Under-Secretary-General for Administration and Management informed the Applicants that:

"The Secretary-General, in view of the unsatisfactory aspects of the case arising from lack of information, has decided to accept the Board's unanimous recommendation that [the Applicants] be paid $1,000 [each] in this respect. However, the Secretary-General cannot concur with the Board's view that the offer made to you on 29 [30] December 1993 was unreasonable and untimely, nor with its recommendation that an indemnity of $4,000 be paid to [the Applicants] on this account. The new post offered to [each Applicant] in December 1993 at DPCSD in New York [and in the case of the Applicant Guest, at UNOG] was the result of intense and prolonged efforts made by the WFC Secretariat which, however late in its coming, remained a sound and valid proposition in view of the few existing openings and of the very difficult financial situation confronting the UN and other international organizations at that time. While it was your privilege to find the terms and conditions of this job offer unsatisfactory and to reject them, it nevertheless fulfilled the Secretary-General's commitment to make every effort to

> find a suitable redeployment opportunity for every WFC General Service staff [member], which did not imply that the new post offered would necessarily carry entitlements identical to the former."

On 24 May 1996, the Applicants filed with the Tribunal the applications referred to earlier.

Whereas the Applicants' principal contentions are:

1. The Secretary-General did not honour his commitment not to terminate any appointments at the WFC. By terminating their appointments, he failed to act in good faith.

2. The Secretary-General did not fulfil his obligations of priority placement and of keeping the staff informed of developments on the reorganization.

Whereas the Respondent's principal contentions are:

1. The Applicants' permanent appointments were properly terminated pursuant to staff regulation 9.1(a). The Respondent has fulfilled his obligations to make good faith efforts to find an alternate post for each Applicant.

2. The Respondent acknowledges that the Applicants may not have been properly informed of the impact of the restructuring of the Secretariat. However, the Applicants have been reasonably compensated for that failure.

The Tribunal, having deliberated from 16 July to 1 August 1997, now pronounces the following judgement:

I. Both of the Applicants served at the G-6 level in the World Food Council (WFC) Secretariat in Rome, and their respective appointments were terminated for abolition of post on 31 December 1993. Although the Applicants filed separate applications, the

Tribunal orders the joinder of the two cases because the cause of action, the pleas and the facts, as well as the legal issues, are identical. The Tribunal considers that the documentation in the case is suffiently complete and, accordingly, decides that an oral hearing is not necessary for it to render a judgement in the case.

II. The Applicants' arguments ultimately rest on a promise made on 11 September 1992, by the Secretary-General, that those in lower echelon positions, such as the Applicants, were "in no danger of losing their employment with the UN as a result of the restructuring exercise." The same promise was reiterated to the UN Staff Union by the Controller on behalf of the Secretary-General on 16 March 1993, and by the Secretary-General himself on 17 June 1993, in a newsletter to the Staff Union in Vienna.

III. The Tribunal first examined this promise, in view of its importance to the case, to ascertain whether it created a legal obligation for the Respondent. The Tribunal notes that this promise was specific in nature, made in public and reiterated in different media. Moreover, the promise was made by an official who had the authority to fulfil it. The Tribunal recalls its holding that "the Administration must behave responsibly in its administrative arrangements and refrain from expressing hopes or intentions that it has no expectation of fulfilling." (Cf. Judgements No. 444, Tortel (1989) and 342, Gomez (1985)). In the light of the foregoing, the Tribunal decides that the promise created a legal obligation for the Secretary-General towards those staff members who were not in upper echelon positions and who were threatened by the abolition of their posts.

IV. Having established the existence of a legally binding promise, the Tribunal next considered the scope and content of the obligation created by the promise. The Tribunal concludes that the promise

compelled the Secretary-General to make, in good faith, his best efforts to place the staff members whose posts had been abolished in reasonably equivalent positions, subject to the availability of such posts and to the willingness of the staff member to be transferred to other duty stations. In this connection, the Tribunal notes that the Applicant Guest had agreed to transfer to Geneva and the Applicant Slatford did not oppose a transfer to a post outside Rome.

V. The Tribunal next considered whether, given the fact that a specific, legally binding promise existed, the Applicants had relied on that promise in such a way as to justify compensation. The Tribunal recalls its jurisprudence on this issue, that "[a] staff member is normally entitled to expect the Organization to honour commitments on which the staff member has relied in good faith." (Cf. Judgement No. 444, Tortel (1989)). The Tribunal notes that the Applicants acted in reliance upon the promise: in good faith, both Applicants let eight months elapse without seeking other employment, trusting that the Secretary-General's promise would be fulfilled and that they would be offered posts equivalent to the ones they held in the WFC. The Tribunal is of the view that, if a staff member has acted, in good faith, in reliance on a legally binding promise, that staff member is entitled to compensation, if such reliance is ultimately detrimental to his or her interests.

VI. The Tribunal notes that the Applicant Slatford was a locally recruited staff member, while the Applicant Guest was recruited internationally. Had the Secretary-General not made the promise described above, his obligation to the Applicant Slatford would have been governed by staff rule 109.1(c)(ii)(a), which would have obliged him to find her a suitable position in Rome. This was the decision of the Tribunal in its Judgement No. 161, Noel (1972). However, the effect of the Secretary-General's unqualified promise was to equalize the position of the Applicants. Indeed, the fact

that the Respondent contemplated posts outside of Rome for the Applicant Slatford suggests that he adopted the same interpretation of his promise.

VII. Having established the content of the obligation created by the Secretary-General's promise, and the Applicants' reliance thereon, the Tribunal went on to examine whether, by his conduct, the Respondent had discharged that obligation. Specifically, the Respondent was obliged to use his best efforts to find suitable positions for both Applicants in the Organization. The facts indicate that, of a total of 13 WFC General Service staff members, only two were re-employed in Rome. Four of the 13 resigned, and five did not wish to be relocated outside Rome. The Applicants declined offers of alternative employment. Thus, the Respondent succeeded in placing only two staff members in new posts. The resignation of four staff members, and the refusal of a further five to be relocated outside Rome, left the Respondent with only two staff members -- the Applicants -- whom he had to place. This was not a very heavy burden.

VIII. A review of the facts reveals some efforts by WFC to place the Applicants and a manifest lack of will on the part of other organizations within the UN system to absorb General Service staff members from WFC. The Applicant Guest's experience in Geneva, where she was interviewed on 28-29 October 1993, for posts with UNCTAD, reveals a rather disorganized effort by the WFC authorities with respect to her placement. The Joint Appeals Board (JAB) report states that "[i]n her concluding summary, the Appellant indicated that only certain interviews had been 'job interviews as such' but even then there [had] not [been] a very clear picture of particular requirements, duties or job availability." The Tribunal notes that the record does not show any attempt made by the WFC authorities to

bring the difficulties they experienced in placing the Applicants, and thus the possible breach of the promise made by the Secretary-General, to his attention or to the attention of those in his cabinet.

IX. The Tribunal notes that, on several occasions, WFC General Service staff members wrote to the WFC authorities, expressing their concern about the approach taken to the redeployment process. The Applicants were among eight WFC staff members who, on 20 May 1993, wrote to the Officer-in-Charge, presenting their concerns about their employment situation. They pointed to the lack of a "policy framework for translating the Secretary-General's 'no job loss' commitment into whatever practical steps might be necessary to uphold it". They stressed the need for more "concrete and authoritative information for staff." On 5 July 1993, the Applicants and six other WFC General Service staff members again wrote to the Officer-in-Charge regarding the need for "transparency on all administrative personnel developments and initiatives which might have implications for any of the WFC staff affected by restructuring." Finally, on 16 July 1993, the Applicants joined a group of WFC staff members in writing to the Acting Director of Personnel, OHRM at Headquarters, expressing concern at "events and information which together seem incompatible with the Secretary-General's promise". They requested that "Headquarters make a further, stronger appeal" to the agencies in Rome.

X. Finally, on 29 and 30 December 1993, the Applicants were offered posts. The Applicant Slatford was offered a post with DPCSC in New York, and the Applicant Guest with the United Nations Compensation Commission in Geneva. The conditions upon which these offers were made, however, were so disadvantageous compared to the Applicants' previous employment that both Applicants declined the

offers. In order to avail herself of the post in Geneva, the Applicant Guest would have been obliged to resign her status as a permanent staff member (thereby forfeiting her right to compensation for involuntary separation), lose seniority to the G-5 level, relinquish her international recruitment status and pay her own travel and removal expenses. Moreover, she was given less than a day in which to accept the offer. The Applicant Slatford's situation was similar. The offer made to her would have necessitated the resignation of her permanent appointment in favour of a one-year probationary appointment and the payment of her own travel and moving expenses to New York. The Tribunal considers that the terms of these offers, and the conditions upon which they were made, demonstrate a callous disregard on the part of the Respondent for his responsibilities towards the Applicants. Such conduct does not meet the minimum requirements of good faith that are essential to good administration.

XI. Having taken account of all the facts, the Tribunal considers that the Respondent did not make his best efforts to place the Applicants in posts that were reasonably equivalent to those they occupied in the WFC, which his promise obliged him to do. The Tribunal concludes that the Respondent must pay the Applicants compensation for the breach of promise to them.

The Tribunal assesses this compensation at one year of each of the Applicant's net base salary at the rate in effect on the date of their separation from service. Furthermore, the Tribunal agrees with the recommendation by the JAB that each Applicant be awarded the sum of $4,000 "for the unreasonable and untimely manner" in which the employment offers were made and the sum of $1,000 for the Respondent's "failure to properly inform [them] of the developments in connection with the restructuring exercise."

XII. For the foregoing reasons, the Tribunal:

(a) Orders the Respondent to pay each Applicant a sum equivalent to one year of her net base salary at the rate in effect at the date of her separation from service;

(b) Orders the Respondent to pay to each Applicant the sum of $4,000 pursuant to the recommendation of the JAB set forth in paragraph XI above;

The above sums are in addition to the $1,000 paid to the Applicants by the Respondent pursuant to his decision of 8 November 1995;

(c) Rejects all other pleas, including the Applicant's request for costs.

(Signatures)

Hubert THIERRY
President

Mikuin Leliel BALANDA
Vice-President

Julio BARBOZA
Member

Geneva, 1 August 1997

R. Maria VICIEN-MILBURN
Executive Secretary